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C O N F I D E N T I A L SECTION 01 OF 02 CAIRO 001339

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SUBJECT: NEW JUDICIAL LAW: A STEP BACK ON JUDICIAL INDEPENDENCE

REF: A. 2006 CAIRO 7034

B. 2007 CAIRO 3526

Classified By: Minister-Counselor for Economic and Political Affairs  
William R. Stewart, for reason 1.4 (d).

¶1. (C) Summary: In the final week of the 2007-2008 parliamentary session, the Egyptian People's Assembly approved several amendments to the Judicial Authorities law. Both the process and substance of the new legislation has been criticized - publicly by the reform-minded Egyptian Judges Club, and in private comments to us by senior "establishment" judges. The overall consensus among judges and judicial experts is that the changes restrict judicial independence, and give the GOE's executive branch further control over the judiciary. End summary.

¶2. (U) On June 16, after a brief but volatile debate, the People's Assembly approved several amendments to Egypt's Judicial Authorities Law. Reportedly, most ruling party MP's supported the measures, while opposition parliamentarians (including the 86 members of the Muslim Brotherhood's parliamentary bloc) opposed them. The most controversial change was a reformation of the Supreme Council for Judicial Authorities (SCJA), a council originally created by President Gamal Abdel Nasser during an infamous 1969 struggle with the judiciary, but that has long since been dormant. The separate Supreme Judiciary Council (composed exclusively of the heads of Egypt's various highest courts, and chaired by Court of Cassation head Moqbel Shaker) has instead been the pre-eminent body overseeing the judiciary.

¶3. (SBU) Under the revised law, the SCJA has new, apparently more robust authorities that will make it the foremost council regarding Egyptian judicial affairs. Previously, the president had chaired the SCJA, but the new law provides for the minister of justice to preside over the council in the president's absence. If other such government councils are any guide, the president will rarely preside over the SCJA, and the minister of justice will act as its head. The current minister of justice, Mamdouh Marei, is widely loathed by judges, reformist and establishment alike (see reftels for prior reporting on Marei's troubled relationship with the judiciary). Judges recoil at the thought of Marei personally heading the council, but also object on principle to a minister, part of the executive branch, presiding over a council that oversees the judicial branch. They view this as a constraint on judicial independence, and an increased control for the executive over the judiciary. Judges argue that the chief justice of Egypt's Supreme Constitutional Court, who is also a member of the SCJA, outranks the minister, and should chair the council in the president's absence. Other SCJA members include the heads of the Cassation Court, the State Council, the Supreme Court of Appeals, the Prosecutor General, the head of the State Litigation Office, and the director of the Administrative Prosecution.

¶4. (SBU) Precisely what the SCJA's authorities will be remains nebulous. The text of the revised law has not yet been made public, so we have not been able to review the legislation in full. An Egyptian NGO, the Arab Center for the Independence of the Judiciary and the Legal Profession, has reviewed the law, and issued a statement noting that, "The competencies of the planned council are formulated in vague terms and do not clearly delineate the council's powers. This could lead to ordinary judicial matters - such as the transferal, appointment, promotion, relocation, and discipline of judges - being regarded as matters which concern the judicial bodies, allowing the executive branch embodied in the minister of justice to interfere inappropriately in matters which are purely judicial. This would undermine the principle of the separation of powers and violate judicial independence." Some judges have told us they fear that the SCJA's powers will extend to controlling judicial budgets and determining case distribution. Speaker of the People's Assembly Fathi Surour told journalists that the SCJA will be "merely administrative," and thus, it will not have the power to influence judicial appointments and decisions. But, given the reported vagueness of the law's language, judges we spoke with are skeptical that in practice, the SCJA will have such a restrained view of its authorities. Other amendments to the law include less controversial changes such as allowing retiring judges to claim their pensions and insurance payments at an earlier age, and administrative changes regarding hearing procedures for the Supreme Constitutional Court.

¶5. (C) In our conversations with a variety of judges from across the judicial spectrum, all were unhappy with the new

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law. There is deep judicial discomfort regarding the minister of justice's new role as head (in the president's absence) of the SCJA, and concern about the possible range of the council's authorities. Judges are also unhappy with the process by which the changes to the law were made, viewing it as "rushed" and "secretive, with no consultation with judges about it beforehand." The reformist Egyptian Judges Club has been very critical of the changes, noting that Marei "should have consulted with judges before presenting this flawed law."

¶6. (C) Legislation regarding the judiciary is supposed to be presented to the Supreme Judicial Council for review before being sent to parliament for approval. Apparently, the new changes were not seen by the full council prior to their passage by the People's Assembly, which has further incensed judges. A judge close to Court of Cassation head Moqbel Shaker (who heads the Supreme Judicial Council) tells us that Shaker did indeed approve the changes, "but was forced to do so, or else he would have lost his position. He is like a dog with its tail between its legs, doing what its master wants. Under instructions from on high, he did not present the draft changes to the full Supreme Judicial Council, because they would not have approved the amendments. As judges, we are all ashamed of him." One Court of Cassation judge, in an emotional conversation about the changes, told us that "we are living through the darkest moment in the history of the Egyptian judiciary. We have always been a proud, independent judiciary, but that independence has been eroded by the current Egyptian regime, to the extent that we as judges now stand humiliated."

SCOBEDY